

JAN 25 2017

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that, under certain
2 circumstances, allowing a private person to act as a tax
3 collection agent is likely to ease the burden of collecting
4 taxes. Section 237-9(e), Hawaii Revised Statutes, allows a
5 person engaged in network marketing, multi-level marketing, or
6 other similar business to enter into an agreement with the
7 department of taxation to act as a tax collection agent on
8 behalf of its direct sellers. The legislature finds that
9 similarly allowing a transient accommodations broker to act as a
10 tax collection agent on behalf of providers of transient
11 accommodations that utilize the services of the transient
12 accommodations broker may facilitate the collection of transient
13 accommodations taxes and general excise taxes.

14 The purpose of this Act is to enable a transient
15 accommodations broker to register as a tax collection agent with
16 respect to transient accommodations taxes and general excise
17 taxes for its operators and plan managers in a manner that



1 recognizes the dynamic changes occurring in the transient
2 accommodations sector. This Act is not intended to preempt or
3 otherwise limit the authority of counties to adopt, monitor, and
4 enforce local land use regulations, nor is this Act intended to
5 transfer the authority to monitor and enforce such regulations
6 away from the counties.

7 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§237- Transient accommodations broker as tax collection
11 agent. (a) The director may permit a transient accommodations
12 broker to register as a tax collection agent on behalf of all of
13 its operators and plan managers by entering into a tax
14 collection agreement with the director or by submitting a
15 transient accommodations broker tax collection agent
16 registration statement to the director.

17 The director may deny an application for registration as a
18 transient accommodations broker tax collection agent under this
19 section for any cause authorized by law, including but not
20 limited to any violation of this chapter or rules adopted
21 pursuant thereto, violation of any prior tax collection



1 agreement, or failure to meet minimum criteria that may be set
2 forth by the department in rules adopted pursuant to chapter 91.

3 Execution of a tax collection agreement shall not be a
4 requirement for registration as a transient accommodations
5 broker tax collection agent.

6 The director shall issue a certificate of registration or
7 letter of denial within thirty days after a transient
8 accommodations broker submits to the director a completed and
9 signed transient accommodations broker tax collection agent
10 registration statement, in a form prescribed by the department.

11 The registration shall be valid only for the transient
12 accommodations broker tax collection agent in whose name it is
13 issued, and for the website or platform designated therein, and
14 shall not be transferable.

15 A registered transient accommodations broker tax collection
16 agent shall be issued separate licenses under this chapter with
17 respect to taxes payable on behalf of its operators and plan
18 managers in its capacity as a registered transient
19 accommodations broker tax collection agent and, if applicable,
20 with respect to any taxes payable under this chapter for its own
21 business activities. A registered transient accommodations



1 broker tax collection agent shall file with the department
2 monthly or other periodic returns as required by section 237-30.
3 The required reporting information shall include but not be
4 limited to gross transient accommodations rentals, exemptions,
5 and taxable income from the registered transient accommodations
6 broker tax collection agent's business activity.

7 (b) In addition to its own responsibilities under this
8 chapter, a registered transient accommodations broker tax
9 collection agent shall report, collect, and pay over the taxes
10 due under this chapter on behalf of all of its operators and
11 plan managers from the date of registration until the
12 registration is canceled as provided in subsection (h); provided
13 that the registered transient accommodations broker tax
14 collection agent's obligation to report, collect, and pay taxes
15 on behalf of all of its operators and plan managers shall apply
16 solely to transient accommodations in the State arranged or
17 booked directly through the registered transient accommodations
18 broker tax collection agent.

19 (c) The registered transient accommodations broker tax
20 collection agent's operators and plan managers shall be deemed
21 licensed under this chapter; provided that the licensure shall



1 apply solely to the business activity conducted directly through
2 the registered transient accommodations broker tax collection
3 agent from the date of registration until the registration is
4 canceled as provided in subsection (h). For purposes of any
5 other business activity, the operators and plan managers are
6 subject to all requirements of title 14 as if this section did
7 not exist.

8 (d) Under this section, a registered transient
9 accommodations broker tax collection agent shall assume all
10 obligations, rights, and responsibilities imposed by this
11 chapter upon its operators and plan managers with respect to
12 their business activities conducted directly through the
13 registered transient accommodations broker tax collection agent
14 from the date of registration until the registration is canceled
15 as provided in subsection (h).

16 (e) A transient accommodations broker tax collection agent
17 collects taxes imposed by this chapter on behalf of operators
18 and plan managers, but if the agent does not report or pay the
19 taxes due, then the agent shall be personally liable, together
20 with penalties and interest as provided by law.



1 (f) All returns and other information provided by a
2 registered transient accommodations broker tax collection agent,
3 including the application for registration as a transient
4 accommodations broker tax collection agent or any tax collection
5 agreement, shall be confidential, and disclosure thereof shall
6 be prohibited as provided in section 237-34; provided that no
7 disclosure of returns or information provided by the transient
8 accommodations broker tax collection agent with respect to its
9 operators and plan managers shall be made pursuant to section
10 237-34(b)(9), (10), or (11).

11 (g) A registered transient accommodations broker tax
12 collection agent shall notify all of its operators and plan
13 managers in the State that it has been designated to collect,
14 report, and pay over the tax imposed by this chapter on their
15 behalf.

16 The director may require the transient accommodations
17 broker tax collection agent, as a condition of obtaining a
18 license, to furnish with an annual return, a list including the
19 federal tax identification number of all operators and plan
20 managers for the taxable year to whom the transient
21 accommodations broker tax collection agent has provided



1 information returns required under the Internal Revenue Code,
2 and any other information that is relevant to ensure proper
3 payment of taxes under title 14.

4 A transient accommodations broker tax collection agent
5 shall provide the names or addresses of any of its operators and
6 plan managers to the director when such a request is made
7 through a lawful and valid administrative process or upon waiver
8 by the operator or plan manager.

9 (h) The registration provided for under this section shall
10 be effective until canceled in writing.

11 A registered transient accommodations broker tax collection
12 agent may cancel its registration under this section by
13 delivering written notice of cancellation to the director and
14 each of its operators and plan managers furnishing transient
15 accommodations in the State no later than ninety days prior to
16 the effective date of cancellation.

17 The director may cancel a transient accommodations broker
18 tax collection agent's registration under this section for any
19 cause, including but not limited to any violation of this
20 chapter or rules adopted pursuant thereto, or for violation of
21 any applicable tax collection agreement, by delivering written



1 notice of cancellation to the transient accommodations broker
2 tax collection agent no later than ninety days prior to the
3 effective date of cancellation.

4 (i) All registered transient accommodations broker tax
5 collection agents shall:

6 (1) Prior to placing an advertisement, including an online
7 advertisement, on the availability of a property for
8 lease or rent on behalf of an operator or plan
9 manager, notify the operator or plan manager that the
10 subject property is required to be in compliance with
11 applicable land use laws prior to retaining the
12 services of the transient accommodations broker; and

13 (2) Require the operator or plan manager to attest that
14 the subject property is in compliance with applicable
15 land use laws.

16 (j) Nothing contained in this section shall limit the
17 authority of the department under section 231-7 to conduct
18 audits, investigations, and hearings, and to issue subpoenas.
19 This shall include the authority to obtain transaction-level
20 data for specific transactions from a transient accommodations
21 broker tax collection agent.



(k) In addition to all other reporting requirements under title 14, each transient accommodations broker tax collection agent shall report annually to the director on an aggregate basis the following:

(1) The total number of operators and plan managers by county on whose behalf the transient accommodations broker tax collection agent collected and remitted taxes imposed by this chapter; and

(2) The total taxes by county imposed by this chapter so collected and remitted.

(1) For the purposes of this section:

"Operator" has the same meaning as in section 237D-1.

"Plan manager" has the same meaning as in section 237D-1.

"Transient accommodations broker" has the same meaning as in section 237D-1."

SECTION 3. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237D- Transient accommodations broker as tax collection agent. (a) The director may permit a transient accommodations broker to register as a tax collection agent on



1 behalf of all of its operators and plan managers by entering
2 into a tax collection agreement with the director or by
3 submitting a transient accommodations broker tax collection
4 agent registration statement to the director.

5 The director may deny an application for registration as a
6 transient accommodations broker tax collection agent under this
7 section for any cause authorized by law, including but not
8 limited to any violation of this chapter or rules adopted
9 pursuant thereto, violation of any prior tax collection
10 agreement, or failure to meet minimum criteria that may be set
11 forth by the department in rules adopted pursuant to chapter 91.

12 Execution of a tax collection agreement shall not be a
13 requirement for registration as a transient accommodations
14 broker tax collection agent.

15 The director shall issue a certificate of registration or
16 letter of denial within thirty days after a transient
17 accommodations broker submits to the director a completed and
18 signed transient accommodations broker tax collection agent
19 registration statement, in a form prescribed by the department.

20 The registration shall be valid only for the transient
21 accommodations broker tax collection agent in whose name it is



1 issued, and for the website or platform designated therein, and
2 shall not be transferable.

3 A registered transient accommodations broker tax collection
4 agent shall be issued separate certificates of registration
5 under this chapter with respect to taxes payable on behalf of
6 its operators and plan managers in its capacity as a registered
7 transient accommodations broker tax collection agent and, if
8 applicable, with respect to any taxes payable under this chapter
9 for its own business activities. A registered transient
10 accommodations broker tax collection agent shall file with the
11 department monthly or other periodic returns as required by
12 section 237D-6, reporting information including, without
13 limitation, gross rentals or gross rental proceeds, exemptions
14 or deductions, taxable proceeds, and taxes, each separated by
15 taxation district.

16 (b) In addition to its own responsibilities under this
17 chapter, a registered transient accommodations broker tax
18 collection agent shall report, collect, and pay over the taxes
19 due under this chapter on behalf of all of its operators and
20 plan managers from the date of registration until the
21 registration is canceled as provided in subsection (h); provided



1 that the registered transient accommodations broker tax
2 collection agent's obligation to report, collect, and pay taxes
3 on behalf of all of its operators and plan managers shall apply
4 solely to transient accommodations in the State arranged or
5 booked directly through the registered transient accommodations
6 broker tax collection agent.

7 (c) The registered transient accommodations broker tax
8 collection agent's operators and plan managers shall be deemed
9 registered under this chapter; provided that the registration
10 shall apply solely to the business activity conducted directly
11 through the registered transient accommodations broker tax
12 collection agent from the date of registration until the
13 registration is canceled as provided in subsection (h). For
14 purposes of any other business activity, the operators and plan
15 managers are subject to all requirements of title 14 as if this
16 section did not exist.

17 (d) Under this section, a registered transient
18 accommodations broker tax collection agent shall assume all
19 obligations, rights, and responsibilities imposed by this
20 chapter upon its operators and plan managers with respect to
21 their business activities conducted directly through the



1 registered transient accommodations broker tax collection agent
2 from the date of registration until the registration is canceled
3 as provided in subsection (h).

4 (e) A transient accommodations broker tax collection agent
5 collects taxes imposed by this chapter on behalf of operators
6 and plan managers, but if the agent does not report or pay the
7 taxes due, then the agent shall be personally liable, together
8 with penalties and interest as provided by law.

9 (f) All returns and other information provided by a
10 registered transient accommodations broker tax collection agent,
11 including the application for registration as a transient
12 accommodations broker tax collection agent or any tax collection
13 agreement, shall be confidential, and disclosure thereof shall
14 be prohibited as provided in section 237D-13; provided that no
15 disclosure of returns or information provided by the transient
16 accommodations broker tax collection agent with respect to its
17 operators and plan managers shall be made pursuant to section
18 237D-13(a)(9), (10), or (11).

19 (g) A registered transient accommodations broker tax
20 collection agent shall notify all of its operators and plan
21 managers in the State that it has been designated to collect,



1 report, and pay over the tax imposed by this chapter on their
2 behalf.

3 The director may require the transient accommodations
4 broker tax collection agent, as a condition of obtaining a
5 license, to furnish with an annual return, a list including the
6 federal tax identification number of all operators and plan
7 managers for the taxable year to whom the transient
8 accommodations broker tax collection agent has provided
9 information returns required under the Internal Revenue Code,
10 and any other information that is relevant to ensure proper
11 payment of taxes under title 14.

12 A transient accommodations broker tax collection agent
13 shall provide the names or addresses of any of its operators and
14 plan managers to the director when such a request is made
15 through a lawful and valid administrative process or upon waiver
16 by the operator or plan manager.

17 (h) The registration provided for under this section shall
18 be effective until canceled in writing.

19 A registered transient accommodations broker tax collection
20 agent may cancel its registration under this section by
21 delivering written notice of cancellation to the director and



1 each of its operators and plan managers furnishing transient
2 accommodations in the State no later than ninety days prior to
3 the effective date of cancellation.

4 The director may cancel a transient accommodations broker
5 tax collection agent's registration under this section for any
6 cause, including but not limited to any violation of this
7 chapter or rules adopted pursuant thereto, or for violation of
8 any applicable tax collection agreement, by delivering written
9 notice of cancellation to the transient accommodations broker
10 tax collection agent no later than ninety days prior to the
11 effective date of cancellation.

12 (i) All registered transient accommodations broker tax
13 collection agents shall:

14 (1) Prior to placing an advertisement, including an online
15 advertisement, on the availability of a property for
16 lease or rent on behalf of an operator or plan
17 manager, notify the operator or plan manager that the
18 subject property is required to be in compliance with
19 applicable land use laws prior to retaining the
20 services of the transient accommodations broker; and



1 (2) Require the operator or plan manager to attest that
2 the subject property is in compliance with applicable
3 land use laws.

4 (j) Nothing contained in this section shall limit the
5 authority of the department under section 231-7 to conduct
6 audits, investigations, and hearings, and to issue subpoenas.
7 This shall include the authority to obtain transaction-level
8 data for specific transactions from a transient accommodations
9 broker tax collection agent.

10 (k) In addition to all other reporting requirements under
11 title 14, each transient accommodations broker tax collection
12 agent shall report annually to the director on an aggregate
13 basis the following:

14 (1) The total number of operators and plan managers by
15 county on whose behalf the transient accommodations
16 broker tax collection agent collected and remitted
17 taxes imposed by this chapter; and

18 (2) The total taxes imposed by this chapter so collected
19 and remitted."

20 SECTION 4. Section 237D-4, Hawaii Revised Statutes, is
21 amended by amending subsection (c) to read as follows:



1 "(c) Any advertisement, including an online advertisement,
2 for any transient accommodation or resort time share vacation
3 interest, plan, or unit shall conspicuously provide:

4 (1) The registration identification number or an
5 electronic link to the registration identification
6 number of ~~[the]~~ either:

7 (A) The operator or plan manager issued pursuant to
8 this section; ~~[and]~~ or

9 (B) The transient accommodations broker tax
10 collection agent registered under section
11 237D- , if applicable; and

12 (2) The local contact's name, phone number, and electronic
13 mail address, provided that this paragraph shall be
14 considered satisfied if this information is provided
15 to the transient or occupant prior to the furnishing
16 of the transient accommodation or resort time share
17 vacation unit."

18 SECTION 5. By January 1, 2018, the director of taxation
19 shall make available to transient accommodations brokers a form
20 of application for registration as a transient accommodations
21 broker tax collection agent under the new section of chapter



S.B. NO. 1087

Report Title:

Taxation; Transient Accommodations Brokers; Tax Collection Agents; General Excise Tax; Transient Accommodations Tax

Description:

Allows transient accommodations brokers to register as tax collection agents to collect and remit general excise and transient accommodations taxes on behalf of operators and plan managers using their services. Ensures that the subject property is in compliance with applicable land use laws. Sunsets on 12/31/2022.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

